

## JONES DAY

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July 24, 2006

### **BY ECF AND FACSIMILE**

The Honorable Jack B. Weinstein  
United States District Judge  
United States District Court for the Eastern  
District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: Schwab, et al. v. Philip Morris USA, *et al.*  
No. 04 Civ 1945 (JBW)(SMG)

Dear Judge Weinstein:

We have received Your Honor's order setting the case for a status conference on July 31 and informing the parties that one of the matters to be addressed at that conference is whether to strike the rebuttal reports of Dr. John Hauser and Dr. John Beyer. We write to respectfully request that, pending the July 31 conference, the Court vacate the current due date of July 28 for the parties to submit reply briefs.

As the Court is aware, defendants have made *Daubert* motions to exclude the testimony of Drs. Hauser and Beyer. Plaintiffs' oppositions to these motions rely heavily on the rebuttal reports of Drs. Hauser and Beyer. Further, although the rebuttal reports make no effort to fill a number of holes in plaintiffs' case -- such as reliance, loss causation, and statute of limitations to name only a few -- other pending motions incorporate the *Daubert* motions by reference and raise other issues that implicate the rebuttal reports of Drs. Hauser and Beyer. As the Court will appreciate, defendants need to know either that the rebuttal reports will be stricken before submitting reply briefs, or, if the Court does not strike them, defendants should be afforded discovery and an opportunity to have their experts respond to the rebuttal reports before submitting reply briefs.

Accordingly, we respectfully request that the Court vacate the current due date of July 28 for the parties to submit reply briefs and re-set that date in accordance with the Court's resolution of this matter at the July 31 conference. We propose that, in the event the Court strikes the rebuttal reports, the new due date for the reply briefs be on August 4. Alternatively, defendants

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request that the Court hold a conference by telephone on or before July 25 so that this issue can be resolved in advance of the currently scheduled date for submission of reply briefs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Theodore M. Grossman". The signature is fluid and cursive, with the first name "Theodore" being more prominent.

Theodore M. Grossman

cc: All Counsel of Record (by ECF and e-mail)